Ontario

PUBLIC COMMERCIAL VEHICLE ACT

REVIEW COMMITTEE

DISCUSSION PAPER ON RESPONSIBLE TRUCKING

November, 1982

DISCUSSION PAPER
ON
RESPONSIBLE TRUCKING

Published on behalf of
The Ontario Public Commercial Vehicles Act Review Committee

by
The Ontario Ministry of Transportation and Communications

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West Building
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M3M 1J8

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TABLE OF CONTENTS

	Page
Review Committee Members	i
Procedure for Comment	ii
PREFACE	iii
1/ INTRODUCTION	1
2/ GENERAL SUMMARY OF ISSUES	3
2.1/ Economic Factors	
2.2/ Efficiency and Flexibility	
2.3/ Equitable Competition	
2.4/ Obligations and Risks	
2.5/ Role of Government	
3/ PROPOSALS FOR REGULATION	13
3.1/ Overall Approach	
3.2/ Definitions	
3.3/ Entry	
3.4/ Performance	
3.5/ Institutional process	
4/ SUMMARY	29

ONTARIO PUBLIC COMMERCIAL VEHICLE ACT
REVIEW COMMITTEE MEMBERS

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Safety and Regulation
Ministry of Transportation & Communications

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University of Toronto

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MTC

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(Past member)

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(Past member)

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(Past member)

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MTC

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Vice-President
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(Past member)

ROD TAYLOR
Canadian Manufacturers' Association
(Past member)

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President
Teamsters' Joint Council

CHARLES WILMOT
Executive Director, Enforcement
MTC
(Past member)

BLAIR GOUGH (Secretary)
Truck Transportation Office
MTC

MURRAY LISTER (Co-ordinator)
PCV Review Committee
MTC

PROCEDURE FOR COMMENT

Notice of intent to submit written comment should be directed to the Committee Co-ordinator by telephone or by mail by Monday December 13, 1982.

Written comments must be received by Monday January 17, 1983 at:

PCV Review Committee
Ministry of Transportation
and Communications
1201 Wilson Avenue
West Building
Downsview, Ontario
M3M 1J8

Telephone 416-248-3634.

PREFACE

This Discussion Paper is the Interim Report of the Ontario Public Commercial Vehicle Act Review Committee, prepared at the request of the Honourable J.W. Snow, Minister of Transportation and Communications.

The paper presents the views of the Committee on the general direction in which the Ontario Government should develop new legislation to regulate the for-hire trucking industry. In general, the Committee prefers a more clearly defined and easily understood test of entry into the trucking industry than the present test of "public necessity and convenience", and an increase in performance controls relative to the present PCV Act. The detailed mechanisms by which all of this could be achieved are still being explored; what is important at this interim stage is the overall intent and framework of regulation. These have been the focus of the Review Committee's efforts to date, and are the main subject of this paper.

The purpose of the paper is to outline the direction and principles of reform on which more detailed work is proceeding, and to invite comment and feedback to Committee members from interested parties. To emphasize the importance of feedback at this stage in its deliberations, the Committee decided to report its progress to date in the form of a "Discussion Paper".

The procedure and dates for making formal comment are outlined on page ii.

It is hoped that with the benefit of feedback and further discussion we can develop recommendations on the mechanisms for regulation which are both practical and implementable. We plan to complete this task and submit our final report to the Minister by the end of March 1983.

The paper is primarily addressed to the reader who will already be familiar with the history and the issues of trucking regulation. None of the historical background to the industry or the PCV Act, or even the formation of the Committee is reported here. More detail on the origins, activities and issues discussed by the Committee are contained in the Committee's proceedings which are available upon request.

The process by which the Committee has come to its views is outlined in Section 1 of this paper. Section 2 presents a synopsis of the important issues for trucking which the Committee feels lie in the future. These are the issues which the proposals are designed to address. The proposals themselves are contained in Section 3.

This subject of regulatory reform has been the focus of many conferences, reports and other examinations in the past few years in Canada and the United States. We feel that our effort reflects a balance between a comprehensive approach and practical improvements which are appropriate for Ontario.

It has been fundamental to our thinking that changes must start from the existing system and not create major discontinuities. Although the detailed mechanisms for implementation have not yet been settled, we believe that the approach outlined here promises a more unified and consistent approach to regulation that will permit both carriers and shippers to invest and perform more productively.

M.H. Larratt-Smith
Chairman
PCV Review Committee

Toronto

1/INTRODUCTION

The PCV Review Committee was formed in June 1981, with the purpose

> to advise the Minister of Transportation and Communications on the principles that should form the foundation of new legislation which will regulate the trucking industry in Ontario over the next two or three decades.

The scope of the review was limited to the Public Commercial Vehicles (PCV) Act and the economic regulation of trucking. It excluded matters related to the Highway Traffic Act such as equipment size and the matter of truck safety, which has been the subject of a parallel process of review by the Ontario Commission on Truck Safety.

Most members appointed to the Committee by the Minister have been involved with truck transportation in Ontario for many years in one capacity or another. The wide range of experience among the members has been the principal source of insight and perspective for the Committee in its deliberations. Many others were also consulted for their perspectives and advice. Over 100 executives and experts were asked to attend different sessions of the Committee to discuss their views and written briefs were received as well. Individual members of the Committee have also consulted with a much wider community regarding the issues involved.

The Committee has met approximately once a month for the past year. The views presented in this report are the product of those meetings.

There has been an earnest effort to consider all perspectives to the issues. A deliberate and structured process has been followed in developing this approach for regulation. It has involved three phases to date, with one phase to follow:

- Orientation and overview
- Identification of the key issues and objectives
- Considering new principles
- Outlining mechanisms for regulation

1.1/Orientation And Overview

The greatest amount of time was invested in this crucial phase of problem definition. The purpose has been to develop a comprehensive and common understanding so that consensus could be reached on where the key issues really lie. The Committee was engaged in this effort from June until February, 1982.

1.2/Identifying The Issues And Objectives

In April, agreement was reached on a comprehensive list of issues to be addressed. From this, a list of major objectives and tradeoffs has gradually been distilled. A synopsis of both the issues and objectives is contained in the next section of this paper.

1.3/Considering New Principles

Three different scenarios were considered, ranging from slight modification of the present system, through a major reorientation, to almost total deregulation. Attractive ideas were extracted from all three scenarios and proposals developed along the lines of reorientating regulation toward the quality of performance. These are the proposals outlined in Section 3.

At this point in the development of the proposals, the greater substance is contained in the outlines of intent rather than in the mechanisms for regulation. Both are shown in Section 3.

1.4/Outlining Mechanisms For Regulation

Some of the major issues under continuing discussion in the Committee are indicated in Section 4. In the next few months the Committee hopes to resolve the issues related to the principal mechanisms of regulation and refine its overall direction based on feedback from this discussion paper. Feedback is expected in the form of contact with Committee members, written submissions and discussion sessions.

A Final Report will be submitted to the Minister early in 1983. It will contain more detail than this discussion paper on background to the issues and on regulatory mechanisms.

The Final Report will also summarize the Committee's recommendations in terms of (1) the objectives of the new system (2) the results desired and recommendations on how such results can be measured (3) the expected impacts of the new system on shippers and carriers and (4) the costs of the system, relative to the current PCV Act.

2/GENERAL SUMMARY OF ISSUES

2.1/ECONOMIC FACTORS

> "Within only thirty years the piston engine aircraft disappeared and in only a little more than forty we built every expressway that now exists....but bigger changes are coming in less time than that."
>
> J.H. McNeal: Budd President

It would be a cliche to suggest that "these are turbulent times"; but it would seem that change and turbulence are indeed the most certain things we have to anticipate. The only thing which distinguishes one decade from another is the brand of turbulence.

The economic engines of change in the 1980's include inflation and rising global trade and competition. These forces have the potential of redistributing future activities and gains - in spite of the best laid plans and expectations of the construction and growth decades of the 1950's and 60's. Even some shortages, such as the crisis in energy, can be placed in the context of inflation and rising global competition for a share in growth. In transportation, the effects of these forces are creating change for shippers, carriers, and government.

Shippers and carriers are wrestling with the prospects of sharply rising costs of equipment, fuel, interest and labour. These translate to the need for more efficiency, and the prospects of shrinking margins (higher risks for lower returns). Add to this the short term effects of overcapacity created by a deep recession, and it becomes imperative to be able to respond to this phalanx of economic forces.

Governments too are faced with similar problems of how to use or change the public infrastructure in the face of those forces, while meeting the demands for increasing economic and social effectiveness for less cost (higher expectations for lower resources). How to maintain the greatest returns on the investment in public highways? How to change the legislated structure of transportation to produce a system capable of adapting and allowing shippers and carriers to better manage the challenges of inflation, competition and changing technology?

The Ontario Government outlined some of its own analysis of appropriate public goals for the 1980's at the first Minister's Conference of February 1982:

- o productivity growth is the key to future real income increases for Canadians
- o innovative, Canadian based, internationally competitive economic development has to be a goal for a trading nation such as Canada
- o these things can be accomplished by (i) restoring a climate of confidence; (ii) encouraging small business creation and development; (iii) increasing investment; (iv) developing human resources; (v) enhancing trade and export opportunities

In the world arena, comparisons with Japan have become an international passtime. If that is born of envy, and if Japan is a good example, then wealth lies not so much in an endowment of physical resources - as in human resources - and what one does with trade opportunities.

The key question is how to structure the responsibilities, opportunities and the means for producers and consumers, the human resources, to deal with the economic challenges and opportunities that lie ahead, and specifically how to do it for shippers and carriers in Ontario. And finally what are the implications for the Public Commercial Vehicles Act.

2.2/EFFICIENCY AND FLEXIBILITY

When the effects of change and economic pressures ripple through the economy and reach the distribution system, the result is tighter scrutiny/management of excess; that is tighter management of inventory and empty trucks, and more productive uses of time and money. The response is the same for all sectors: in primary industries such as forestry, mining or farming; the manufacturing sector; or the service industries, such as trucking itself for example.

As spare capacity and inventories are pared back there is less slack in the system with which to absorb normal variations and important opportunities or problems. The response must come from a more flexible production system - including transportation. More utilization in planned operations, more competitive purchasing, and development of premium transport services to reduce either stored or in-transit inventories or both. This also means more consolidation, rationalizing of production, warehousing and distribution facilities, and migration of freight towards faster modes. As shippers restructure to adapt to economic pressures, trucking becomes a more strategic resource. Users will want to exploit all of the flexibilities of the truck mode.

A key to survival in the trucking business, therefore, will be increasing efficiency and flexibility - to respond both to the demands of customers and to economic pressures on the industry itself. What will be needed is more price and service tailoring, bigger and more specialized equipment; and these will be directed towards achieving greater utilization and reducing spare capacity. Carriers may also pursue more specialization or diversification (another aspect of flexible service) to manage the risks inherent with less spare capacity and slimmer margins.

Shippers think that the current PCV Act fails to recognize the need or advantage of such flexibility. Carriers think that the Act contains some unnecessary roadblocks to the desired level of flexibility. It binds resources to fragmented markets (routes and commodities) and ties down more resources dealing with red tape. Overlapping regulation and complex specifications of authority add to this burden and further deflect energies from service.

Changes to the Motor Carrier Act in the United States made in 1980, relate closely to these matters. Many of the effects of relaxing the degree and detail of regulatory restrictions on trucking in the U.S. have yet to be confirmed by time. But it is apparent that both shippers and carriers have been forced to manage more strategically.

2.3/EQUITABLE COMPETITION

Tougher competition for the Canadian economy, it appears, will be transmitted into tougher competition within the trucking industry. The competition for freight will come from all directions: from trucks, from other modes, and in the long run from changes in production. There will be more freight, or less,produced and moved in Ontario depending on how competitively the goods can be produced and delivered. Production and distribution strategies will change according to whether transport is seen as part of the problem, or part of the solution. Other modes, such as air and piggy-back, will work away at any freight where there is a premium on time or cost. And truckers will find new ways and wrinkles to use the technical or legal infrastructure to compete for business. As the MacPherson Royal Commission declared on behalf of the railroads in the 1960's, no mode or service has any monopoly on the freight any more.

With the maturing of the trucking business, the market has started to segregate itself out, and the variety of competitors within the industry have indeed mushroomed during the 1970's; the very strong growth of private carriage and leasing alternatives being the best examples. Also there has been the more recent explosive growth of couriers and transportation brokerage (both of which have probably generated new freight), and the growth of contract services, using a tendering or bidding process.

Most of this competition escapes the burdens of regulation, and it has eroded the domain of the traditional regulated carrier. Some are exploiting the system of regulation itself to carve their niche, such as the intermediaries - and some are calling for liberalization of regulation so the new services can be expanded further, such as private carriage. The trends do not favour continuation of existing regulation.

In the end, the pressures on the economy have shown up in pervasive competition pressures within trucking; and far from providing shelter from competition, regulation itself has become an instrument to provide shelter for competitors. The "traditional" regulated carriers have not been able to meet the competition within the Act, and in response have turned to "bending the rules" themselves where necessary.

The government has failed to close the door on this kind of competition. The incentives to bend the rules or find loopholes are enormous, partly because of the inflexibility of the current system and the drive to out-manoeuver opponents.

In moving to close loopholes or eliminate them with exemptions, government often creates greater problems of detail and complexity; for example, the complexities of defining the location of Ottawa, the qualities which exempt a turnip, or when a lease is a lease, make detection and prosecution of offenders difficult and expensive. Finally, when the courts place PCV offences in the context of other crimes against society, they do not impose the harsh or punitive penalties which would act as deterrents to offenders.

All of this is seen as creating an unjust and an unfair situation. Whatever it is that the current government rules are supposed to do, and whether or not they achieve it, it appears that competition is being waged according to a set of rules different from the PCV Act. For those with any regard for the obligations, privileges and commercial order supposed to be created by the laws, the situation is untenable. The law is discredited and those that conform bring upon themselves burdens not suffered by their competitors, and for which there is no compensation.

Throughout the examination of issues a universal refrain we have heard was that whatever the rules, there must be higher compliance in the future, in order to restore fair competition.

2.4/OBLIGATIONS AND RISKS

Anxieties over the state of competition in trucking are not new. They were the stimulus to the original PCV Act in the turbulence of another decade, the 1920's. Both shippers and carriers had fears then which government reconciled in the bargain which is the basis of the PCV Act.

In the 1920's Ontario was a rural economy where a high proportion of shippers were small and remote. Veterans of World War I were proving what they discovered in Europe - that trucking was a technically and commercially viable alternative to railroads. While there was widespread and sophisticated knowledge of the railroad market, there wasn't the same sophistication in the truck market. Small and rural shippers feared that they would be by-passed by the advantages of the new mode, as they had initially by the railroads. And carriers feared that unsophisticated truckers would cut rates below long run costs, and drive themselves and everyone else through revolving bankruptcies.

Both fears appeared justified, and the PCV legislation was developed to regulate the industry as a utility as were railroads. The bargain contained in the Act was that in return for an undertaking to serve all points in a given territory without discrimination (i.e. at reasonable rates), carriers would be protected from excess competition. Investment risks were made more predictable in return for service extensions. The instruments to achieve this were the licence/authority or "franchise" and the "common carrier obligations".

During the relatively stable 1950's and 60's, the result was that the industry attracted capital and grew phenominally. It grew to the point where it is now a two billion dollar industry in Ontario and the dominant mode for goods transportation in the province. The issue now is, will the bargain reap such returns for this mature industry in the 1980's and 1990's?

The anxieties of the small/remote shippers have diminished today. The ubiquitous truck has found its way into many farms and businesses, and economies of scale in trucking have not materialized to the extent they did in railways or that was expected in trucking. The small shippers/communities have not found themselves greatly needing or receiving trucking cross-subsidies. Carriers have not found their obligation to serve to be a great burden, and few have been called to account for their part of the bargain (perhaps two in twenty-five years).

On the other side, some carriers feel there are still many unsophisticated competitors capable of driving the market down to disastrous levels. And a new fear has arisen. The few economies of scale that have been discovered reside in the LTL or cross-dock market (market extent). Sophisticated and strongly capitalized competitors in this business are capable of deliberately depressing markets and surviving. Some of the small LTL carriers today have the same fear as their predecessors, that prices will be unable to regulate supply in the LTL industry in the same way they do in other sectors of of the economy. They fear that the result of unchecked competition in this segment of the market will be concentration - the survival of only a very few, very large carriers, probably based outside Ontario.

The bargain appears unsatisfactory and empty now. No one is being asked or forced to advertise, serve, or price all traffic equally (the common carrier obligations); no obligations or responsibilities are required of the shipper to ensure continuous service; and intermediaries have found ways to intermediate or get around government regulatory protection. The carriers risks are not predictable anymore, and while he bears no great public burden of cross subsidy through rates, he retains a variety of residual burdens of regulation - such as extra fees, extra rules, and being singled out as a target for sanctions related to other rules and norms of business practice such as safety, labour, taxes, etc.

2.5/ROLE OF GOVERNMENT

What then are the issues to be addressed by public commercial vehicle legislation in the coming years?

For certain there must be an improvement in the climate of confidence. If the Act was born of fears of market failure, it now suffers from fears of regulatory failure. The confidence about the intent and the application of current legislation is very low. Shippers can see problems and few advantages in the legislation, carriers cannot assess their risks or plan under current circumstances, and frustrated administrators can find little to appeal to any popular sense of justice or common sense in pursuing the significant decisions they must make under the Act.

Users want to continue to be able to find sound public carriers to carry their goods, with private carriage continuing to be an option. Some help in qualifying carriers to an appropriate standard would make risks more predictable. Increased discretion for carriers may also prove useful, in that it will permit them to operate without artificial constraints.

The more that is known for certain about any market (such as its obligations and privileges), the lower the risk premium for entering (or not exiting) that market. The more predictable the risks, the more confidence investors have about their ability to manage around the risk, and obtain adequate compensation. Regulation was intended to provide a measure of stability by moderating some of the risks associated with a developing industry. A structure which allows existing and potential investors to predict and assess risks is crucial to the success of the market in the future as well.

Unwitting or incompetent operators in the industry are capable of creating uncertainties beyond non-compensatory prices. Both shippers and carriers indicate that the occasional bad performer is quite capable of lowering the level of confidence in an industry (segment of trucking) as a whole. An appropriate level of competence and a minimum performance standard would promote confidence in the industry.

For their part, administrators feel that higher levels of compliance must be achievable in new legislation. The present legislation is too far from accepted norms of doing business to encourage much willing compliance or to justify harsh penalties. New legislation must make it simplier to distinguish legal from illegal situations, and the enforcement mechanisms provided must be less clumsy and more cost effective.

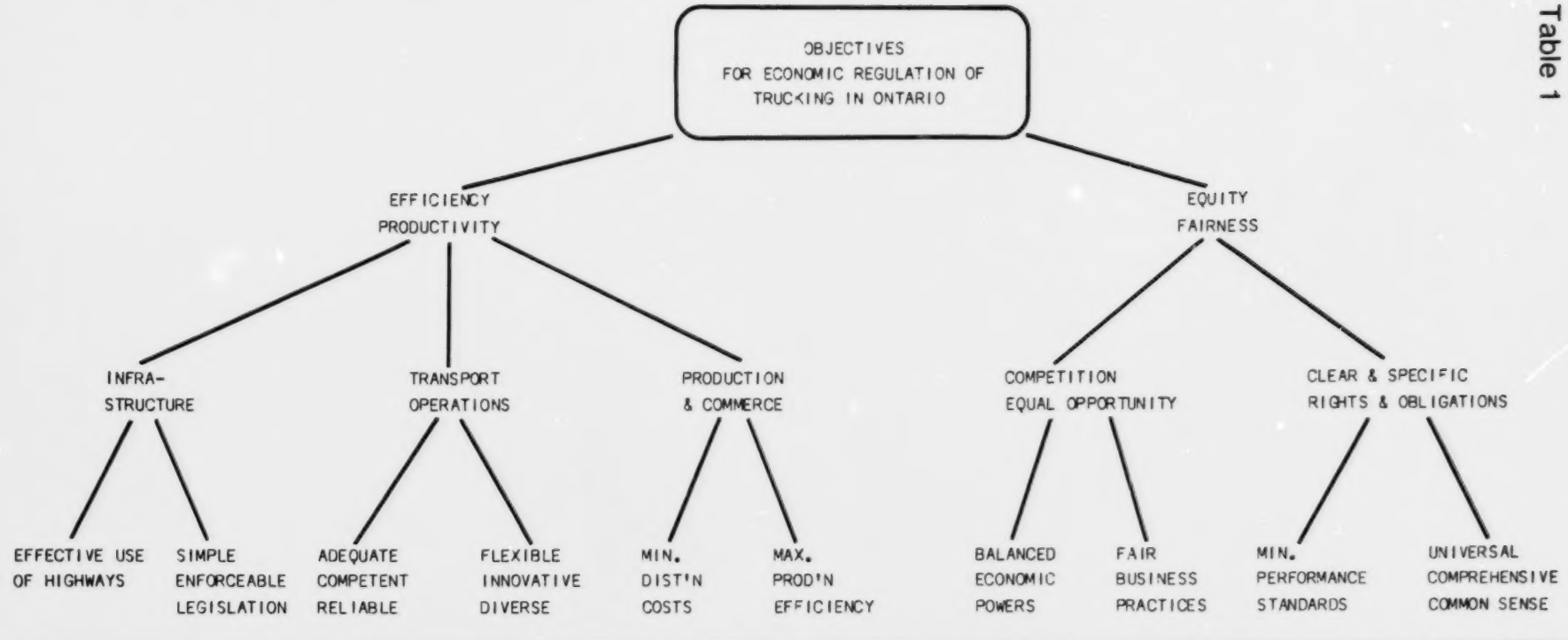
To pursue all these concerns, the main role for government in future legislation should be to build confidence in the fairness and effectiveness of the transportation market.

The legislation must provide a process for administration and adjudication which is clear, simple, even-handed and cost effective. And of equal importance, transitions must be foreseeable, fair and realistic. It should not create major discontinuities.

Our view of the principal objectives and trade-offs that must be achieved are summarized graphically in Table I.

Government should articulate the trade-offs that are made and the objectives being pursued by the legislation and explain to all parties and the public the expected results, including implications and costs. It is important that there be popular understanding and acceptance of the way the industry is to be regulated, and support for the resources to be committed to that end, for enforcement for example.

Table 1



efficient utilization of capacity	low adversary costs	predictable market/ supply	adaptable to production needs	min. inventories	World mandates prod. scale	simple entry	Compensatory prices	Overall Compliance	Willing Compliance
	Minimum red tape	Max. utilization	less restrictive licences	Simplify trade	international competitiveness	Max. local participation		Safety	Interjuris-dictional uniformity
	low cost of enforcement					limit concentration		Entry fitness	Raise understanding and confidence in system

3/PROPOSALS FOR REGULATION

In this outline of reformed regulation we have recorded both the proposed mechanisms and the intent or desired outcome. The purpose of this format is to provide enough of both context and detail so that suggestions and criticism can be better focused.

The overall purpose of the outline is to convey the principles upon which new legislation should be constructed; not to fully develop the detail of the legislation and mechanisms themselves. Many crucial options remain open, and these are highlighted in this and the concluding section.

The structure for the outline is:

- OVERALL APPROACH
- DEFINITIONS
  Vehicle Operator/Carrier, PCV Operating Authority, Commercial Vehicle Operator Registration (CVOR), Place, For-Hire Carrier
- ENTRY
  Fitness test, interventions, Bonafide Contract test.
- PERFORMANCE
  Vehicle Operating Privilege, Review, Transfer
- INSTITUTIONAL PROCESS
  Entry Examinations, Reviews and Advice, Policy Approvals, CVOR Administration, Enforcement

3.1/OVERALL APPROACH

Intent:

We have inquired into the prospects of the for-hire trucking industry in Ontario in depth and conclude that economic regulation must create an environment for trucking different from the conditions created by the current PCV Act.

The legislation should foster fairness, efficiency and responsible business behaviour in the trucking industry. It must accommodate rational operations and operating flexibility, and stimulate innovation. It must foster responsible competition, and prevent destructive competition. And it must encourage compliance and provide for effective enforcement.

The entry process created by the legislation should be a qualification and an information generating process. Applicants should have to declare their intentions and prove their own qualifications to enter specific goods carrying businesses on public highways. Their business success should depend on the market and their record of compliance with the law.

In this approach to regulation the role of government would be to set the standards of conduct and an initial allocation of responsibilities. A second role would be to provide information to the service and capital markets. The purpose would be to create confidence in the fairness and effectiveness of the truck transportation market.

The overall changes in the mechanisms of regulation which we prefer to achieve this new legislated environment are outlined in what follows. It has been our intent that these mechanisms be realistic and workable.

Mechanisms:

The regulatory mechanisms which we prefer all have their equivalents in current PCV legislation and administration. Changes should be implemented so as to minimize disruptions or require no uncommon investments of time or money. It should also be expected that ongoing refinements and improvements will be made as experience accumulates with the new mechanisms.

An important mechanism upon which our approach to regulation is predicated is the "Commercial Vehicle Operator Registration" or "CVOR". This mechanism would be established within the Highway Traffic Act (HTA) and not the PCV Act, and would improve the provisions now contained in the HTA for administering the privilege of operating heavy commercial vehicles on public highways.

Its primary applications would be in enforcing safety and other provisions of the HTA. But it would also have application in fostering responsible trucking under the PCV Act. The concept of the CVOR and its role in PCV administration is further outlined in the sections on "Definitions" and "Performance". It is assumed, however, that the mechanism will be fully outlined and implemented under the HTA.

The scope of the PCV Act applies to the "for-hire" class of carriage. The main instrument of PCV regulation would remain, as today, the "operating authority": the licence to operate trucks for-hire. Private carriage, that is where the carrier has an owner's interest in the goods being carried, should remain outside the PCV Act, as today.

Anyone violating the requirements of the PCV Act would be subject to penalty, as today. It is the CVOR mechanism which will distinguish the effectiveness of the sanction and the integrity of new legislation from the current PCV Act. The virtue of the CVOR is that it facilitates curtailment or suspension of vehicle operating privileges for contravening the Act, whether or not the operator possesses any PCV authority at the time.

The mechanism used to establish an "operating authority" under the PCV Act would be, as today, an entry test. We prefer that the entry mechanism be used to manage the effectiveness of competition in the industry. This would be a more direct approach to fostering the outcomes outlined above than the present initiation test to determine how many companies may participate in any particular market.

The carrier operating record (CVOR file) should be used as an instrument of performance regulation. Any operators seeking competitive advantage through non-compliance with the PCV Act or Highway Traffic Act or the Labour Code or other legislation, would risk his commercial motor vehicle operating privileges.

The effect of this would be to enforce an obligation on the carrier to comply with the laws of doing business.

It would not, however, impose any supplementary obligation upon a carrier to operate any unprofitable service. By eliminating the test of "public necessity", the "Common Carrier Obligation" as it is known in licencing practice today would be abandoned. The Common Law concept of the common carrier obligation would remain intact.

To reduce the complexity of administering the legislation, we think substantial simplifications should be made in the classifications and specifications used in defining operating authorities.

Finally, we think that there should be reduced need for an onerous public hearing process to obtain an operating authority. An administrative process for handling applications should be available. Judicial process should continue to be available on appeal from administrative decisions.

3.2/DEFINITIONS

Intent	Mechanisms
Commercial Vehicle Operator/Carrier	
. A commercial vehicle operator or carrier assumes liability for the conduct of the business operation and its drivers and vehicles. Liability for the integrity of a carrier's CVOR can be shared, but not divested or transferred in total.	. An individual partnership or corporation who owns, leases, or otherwise acquires or arranges the use of a commercial vehicle for the purpose of transporting goods for compensation or not for compensation.
PCV Operating Authority	
. Authority to operate as a for-hire carrier upon passing at least a "fitness test".	. Authority may be limited as to place, customer, or goods, and number of power units.
Commercial Vehicle Operator Registration (CVOR)	
. The CVOR would be the primary instrument of carrier performance control.	. Granted under the Highway Traffic Act (HTA) in conjunction with vehicle registration.
. The CVOR registers a privilege for an identifiable legal entity - the carrier or beneficial operator of the equipment - tied to the principal economic interest (operating commercial vehicles on public highways).	. CVOR Identifier could be in the form of a name or number painted on the vehicle, a plate, or a permit.
	. Each vehicle over a certain GVW must be registered under a CVOR identifier.
. The privilege is freely available to all carriers, but can be removed for cause.	. Infractions of vehicle operator or carrier responsibilities would be accumulated using a point system. Vehicle operating privileges could be reduced gradually by removing certain percentage of fleet permits.
. Cancellation/suspension of the CVOR removes the carrier's ability to provide service.	
. This mechanism makes someone responsible for on-highway operation besides the driver and vehicle owner. It assures that the "carrier" also has a stake in the responsible operation and use of the equipment.	. Registration to owner concept: CVOR cannot be transferred.
	. Full suspension of a CVOR would prevent the company, or persons related thereto as defined under the income tax act, from operating any commercial vehicle on the highway, until privileges were re-instated.
. Creates an investigatory trail.	

Intent	Mechanisms
Place	
. Drop complex territorial and route specification of licences.	. Town, township, county, city, region, district, or commercial zone as may be defined by the tribunal from time to time.
. Retain identity of different truck transportation markets.	. Cannot be smaller than a town.
For-hire Carrier	
. A commercial vehicle operator who can carry goods of any number of occasional shippers and public at large for compensation without any long term contract or arrangement.	. Vehicle operator, operating pursuant to terms of a licence or operating authority. A for-hire carrier is authorized to deal with anyone falling within the market defined on the licence.
	. Licence or authority will be specified by place and type of operation.
	. The for-hire carrier will be obligated to adhere to a common contract of carriage and file statistics with the transport tribunal.

Intent	Mechanisms
"Within" Carrier	
. Brings entry and performance regulation of cartage under Provincial jurisdiction.	. Licence specified as within named places. . Municipalities may choose to register or licence trucking within their borders, but a provincial authority is required in all cases.
"To/From" Carrier	
. Would include Irregular Route, Truckload, Radial or hub and spoke types of operations.	. Licence specified as to/from named places and by equipment type; not shippers or routes etc.
"Between" Carrier	
. Would include Regular Route, Less-than truckload, or Network types of operation.	. Licence specified as between named places.
Contract Carrier	
. Equipment for hire on a dedicated basis. . Risks of the operation are to be specified and shared by means of a contract. No other financial qualification required for the entry fitness test.	. A vehicle operator, operating pursuant to an approved contract. Authorized only to carry the goods of the party named in the contract at any one time. . No limit to the number of contracts that may be held at any one time.

3.3/ENTRY

Intent	Mechanisms
Fitness Test	
. The nature of the fitness test is intended to be more precise and more objective than the test of public necessity and convenience.	. Examination of fitness qualifications of the application (not a test of public necessity and convenience).
. Examination of fitness qualifications is intended to assure that any party to a new business is prepared for the responsibilities, risks or implications attached to the planned operation; that they have gone through a thoughtful process of assessing the situation.	. Fitness certification would be required to initiate a licence or add a new business area to an existing licence.
	. The proposed operation must be declared including type of carriage and number of power units.
. Market instabilities should be better recognized, managed and reconciled by participants.	. Failure to qualify would not prevent any number of altered or improved applications from the same applicant.
. The outcome would be a better basis on which parties could assess their position, consent to their responsibilities, and manage their risks.	. In refusing an application the examining board must specify in what respects the applicant has failed to qualify.
. Through information generation and certification this process should promote the efficiency of the capital market and limit the number of innocent parties to future liabilities, or innocent victims of future failures.	. The tests of fitness could be staged, according to the size and type of operation concerned, with successively stronger tests (e.g. financial ratios, insurance requirement etc.) for larger carriers and those more idependant of contractual support.
. There are two general areas of fitness to examine - operational (including safety, insurance and certificate of competence, knowledge of business, community, shippers, commodity, etc.) - financial	

Intent

- Prevent naive investors or consumers from polluting the market.

- Ensure that each entrant has reasonable prospects of success and the means to run a responsible operation.

- Where the proposed business is to be conducted without a formal contract the examining Board vicariously represents an obligated shipper (ie. in place of one party to a specific contract), to qualify fitness of the undertaking to conduct business with occasional shippers.

- The test does not certify the likely realization of profits; only, that adequate allowance has been made in the prospectus for liabilities such as insurance, maintenance, interest, etc. and that financial backers have identified, acknowledged and supported the risks.

- The effect of the application on other carriers is not at issue. The effect of the market on the application (degree of financial risk) is at issue.

Mechanisms

- The basic tests of fitness:
  - a proper CVOR privilege (a reasonable CVOR record) with proper endorsements for the type of operation proposed.
  - knowledge of applicable legislation (HTA, PCVA, labour code, Animal/ Materials handling, etc.)
  - Minimum insurance coverage.
  - basic knowledge of management responsibilities.

- A carrier with secured (contract) business must only pass the basic fitness test, but authority is limited to haul only on behalf of the party named in a contract. Operating without a contract, or hauling goods on more than one contract at one time on one vehicle is operating outside the authority.

- Applicants for non-contract services must produce a business plan or prospectus for examination. The following elements must be present in the plan:

  - identity of principals
  - financial structure including a minimum degree of equity, source of funds, and affidavits regarding availability of funds.
  - proposed services, points, equipment and tariffs.
  - Minimum levels of cargo, environmental and 3rd party insurance.
  - projected expenses and revenues for at least the first year of operation.

Intent	Mechanisms
	. The examiner may comment on the quality of plans or projections. Such comment will require acknowledgement from all financial backers to the proposal before the application can be approved.
	Option - degree of local participation in the operation could be a factor considered in the prospectus.
	. prospectus is public.
	. Interventions should be allowed only by participants in the proposed market.

Intent	Mechanisms
Bonafide Contract Test	
. The intent of the test is to ensure that parties to the contract have undertaken sufficient responsibilities.	. A bonafide contract must: - be in writing - name parties - indicate the termination date with a minimum duration of 1 year - specify service, price and terms of payment - provide for minimum use or minimum payment - provide for cancellation for cause - provide penalties for improper cancellation.
. The test should prevent contracts from being used as a ruse to qualify for more than a basic service.	. No interventions allowed.
	. The minimum/threshold levels for duration, minimum use/payment, and penalties would be policy variables to be established by the tribunal.
	. A contract certified by this test is registered as the contract of record and is enforceable.
	. Contract modifications must also pass the approval and registration process.
	. Operating outside the terms of the contract of record, even with the consent of both parties, is operating outside the authority and is illegal.

3.4/PERFORMANCE

Intent

- It is necessary to enforce performance of carrier responsibilities accepted at time of entry for safety, maintenance, insurance etc.

- The performance monitored relates to compliance with the law, not financial performance. Anyone who relaxes compliance to cope with poor financial results, could find his operation restricted.

- No operator could take lightly his responsibility for the performance of his fleet, in whatever service it was employed; because for purposes of his CVOR record, he could not pass responsibility on.

- Operators would have to qualify lessees, intermediaries, shippers and drivers carefully and perhaps build penalties into agreements to motivate them to help maintain his CVOR record.

- to keep licence and contract information current, and to discourage blanket applications, the operating authority must be exercised; otherwise lost.

Mechanisms

- The compliance record of any operator would be accumulated within his CVOR file. On convictions of different types, a certain number of demerit points would be attached for a certain period.

- Infractions on the CVOR record would include:
  - operating outside registered authority/contract
  - overweight/over dimension infractions
  - safety (including maintenance)
  - labour code
  - etc.

Option
  - complaints and contract disputes against the operator would be posted on the CVOR file (for a given period). The operator could review the file and add notations. Anyone else could inquire about the CVOR record on the same basis as an inquiry to a Better Business Bureau file.

- A review of CVOR privileges would be triggered by any of the following events
  - at certain demerit levels.
  - when seeking new authority.
  - when number of vehicles registered has doubled since last review.
  - every 5 years.

Intent

Mechanisms

- At certain demerit levels the number of vehicle registrations allowable under the CVOR would be reduced by given percentage amounts for given periods. Efforts would be initiated to improve the carrier compliance performance. For continual non-compliance, no vehicles could be registered under the CVOR, and that legal entity and its principals would be prevented from operating commercial vehicles on the highway.

- Transfer of CVOR privileges or operating authority is not allowed. It will be possible to purchase a going concern, but the new principals must qualify for their own CVOR privileges and operating authority.

- All authorities sunset on their anniversary date, unless reaffirmed by the carrier. Dormant services will be deleted and a new licence issued on the sunset date for each carrier.

3.5/INSTITUTIONAL PROCESS

Intent	Mechanisms
. An independent transport tribunal should be created to take over the functions of the OHTB, and to adjudicate all provincial transport law cases and fitness examinations.	. Applications for operating authority can be made by mail or in person.
. The Transport Tribunal to have no legislative powers	. Notice of the application to be published.
. The Minister to have no powers to hear appeals from individual Tribunal decisions.	. Proceedings and information are open to the public, unless determined by the tribunal to be predjudicial to the interests of the parties.
. The intent is to simplify the application/qualification process and reduce costs to applicants.	. Burden of proof rests with respondent.
. Make greater use of administrative process for first judgement, but retain access to judicial process for appeals.	. Examining officer can deny applications for lack of supporting information. Reasons for denial must be stated.
. Using a test of fitness which can be more concrete and objective than the test of public necessity and convenience, will facilitate separation of tribunal decisions from political petitions.	. Public hearings available only on appeal of examining board's decision.
	. The Tribunal will maintain a file of Registered Authorities and for-hire carrier statistics, all of which will be available to the public and enforcement staff.
. Minister to appoint an Advisory Committee to advise on the health and performance of the goods-moving industries and to recommend changes in policy or legislation when required.	. Tribunal policies must be approved by Cabinet. Policy proposals may be initiated by the Tribunal, by individual petition or by the government, but policy direction rests with Cabinet.

Intent	Mechanisms
	. Augment the Tribunal with a staff of "regional transportation representatives" who can assist or advise shippers and carriers on their obligations, opportunities, and generally improve the circulation of market information among all participants. They could also process requests for policy statements or opinions.
	. Abolish PCV fees.
	. Administer the CVOR system with HTA resources. Retain existing staff and methods for both HTA and PCVA enforcement.
	. Review the performance of PCV legislation every 5 years

4/SUMMARY

Principles for the economic regulation of for-hire trucking on which there is general agreement within the PCV Review Committee include:

- Government has an appropriate role in the regulation of trucking, but not in direct participation in the industry.

- The effect of the PCV Act should be to regulate all "for-hire" carriage through a licencing mechanism. The outcome should be to maintain the quality of competition and an effective market for trucking services.

- There should be no undue advantage to either private carriers or for-hire carriers in the public duties and responsibilities created by the Act.

- The Act should create a system which can be enforced and effective deterants to non-compliance.

- The test of "public necessity and convenience" should be replaced by a more objective test of entry.

- A "fitness" test should be developed with at least two main components

    - operational (including safety)
    - financial

- The classes of carriage and specifications of authority should be simplified, allowing greater latitude of operation.

- The Transport Tribunal should be structured to reduce the need for public hearings.

- The present system of rate filing is unsatisfactory.

- Overlapping and multiple-tier licencing is unsatisfactory.

- The regulatory mechanisms must be practical and the transitions and adjustments required must be realistic.

Matters of principle on which there is not yet a concensus include the following:

- What kind of market test, if any, should there be in the entry tests.
- Should a "Commercial Vehicle Operator Registration" be devised to control the performance of carrier duties.
- Are petitions to Cabinet an appropriate avenue to modify individual decisions of the Transport Tribunal.

Implementation questions on which further discussion and development is required include the following:

- How would fitness requirements vary according to size and type of operation or domicile of the applicant.
- How to deal with inter-jurisdictional issues.
- How would a "Commercial Vehicle Operator Registration" be administered.
- How to structure and fund the Transport Tribunal.
- How to institutionalize government/industry/tribunal consultations.
- Should there be any commodities exempt from the PCV Act.
- What would a "certificate of competence" look like.
- How to limit the terms and specifications of operating authorities.
- How to re-assign PCV licence fees.

Even if the Committee was in a position to design and deliberate these detailed mechanisms at this point, this has not been regarded as its main task. New mechanisms being proposed warrant a thorough process of consideration and development - and beyond that a further period of testing and development. The concept of cycling operating information and experience into the assessment and renewal of policies and legislation is in fact one of the central notions of these proposals.

What is most important is the overall direction and framework for regulation being proposed. Comments both formal and informal would be appreciated, and should be directed to Committee members or the Co-ordinator. Formal comment should be made according to procedures outlines on page ii.